


Memorandum

Date: February 26, 2003

To: Gwen Knittweis
Department of Water Resources
901 P Street
Sacramento, CA 95814

From:  David Johnson, Chief
Legislation, Public Information and Regulations

Subject: (NOP) North Delta Improvements Project SCH# 2003012112

This waterway complex contains many navigable waterways, rivers, and sloughs and the proposed project at some point, may have a negative impact on navigation or the navigability of waterways used by vessels, during the construction or implementation phase of these projects.

Therefore, it is recommended that the project proponent address possible impacts on navigation and mitigation measures needed, such as posting buoys or waterway markers, adopting regulations needed to control vessel speed or limit vessel access during construction or maintenance dredging, or the possibility of issuing local notices to mariners through the U.S. Coast Guard to advise vessel operators of such activities in the areas where the proposed work will take place.

For your information we have enclosed the following:

- (1) A copy of Sections 660(a) and 662 of the Harbors and Navigation Code regarding the areas of boating regulations that may be adopted by political subdivisions of the state and the requirement to submit these regulations to the Department of Boating and Waterways (DBW) for review at least 30 days before the effective date is enclosed.
- (2) A copy of Sections 7000 through 7007 of Title 14 of the California Code of Regulations, regarding the authorization to place waterway markers to warn or advise boaters and the requirement to notify DBW of the placement of such markers is enclosed.
- (3) Telephone numbers for the U.S. Coast Guard for notifying boaters of projects that may effect navigation, through the Local Notice to Mariners i.e., Waterway Management Unit, U.S. Coast Guard in Alameda is (510) 437-3073 and Delta's Coast Guard Boating Safety Unit in Rio Vista, is (707) 374-2871.

If you have any questions regarding these comments, please contact Mike Sotelo of my staff at his number (916) 263-0787

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propulsion, unless the person is accompanied in the vessel by a person who is at least 18 years of age and who is attentive and supervising the operation of the vessel.

(c) Subdivisions (a) and (b) do not apply to any of the following:

(1) A person who operates a vessel as a performer in a professional exhibition.

(2) A person engaged in an organized regatta, vessel race, or water ski race.

(3) A person engaged in a marine event authorized pursuant to Section 268.

(d) Any person who violates this section, and any person who permits any other person under 16 years of age to operate a vessel in violation of this section, is guilty of an infraction.

658.7. Ski flag. (a) Failure of the operator of a vessel involved in towing a skier to display or cause to be displayed a ski flag, as described in subdivision (a) of Section 7009 of Title 14 of the California Code of Regulations, to indicate any of the following conditions, is an infraction punishable by a fine not exceeding fifteen dollars (\$15):

(1) A downed skier.

(2) A skier in the water preparing to ski.

(3) A ski line extended from the vessel.

(4) A ski in the water in the vicinity of the vessel.

(b) Subdivision (a) does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta, vessel or water ski race or competition, or other marine event authorized pursuant to Section 268.

659. Uniform navigational marking of waters. The department may make rules and regulations for the uniform navigational marking of the waters of this state. Such rules and regulations shall not be in conflict with markings prescribed by the United States Coast Guard. No city, county, or person shall mark the waters of this state in any manner in conflict with the markings prescribed by the department.

660. Application of chapter to all waters; local boating regulations. (a) Any ordinance, law, regulation, or rule relating to vessels, which is adopted pursuant to provisions of law other than this chapter by any entity other than the department, including but not limited to any county, city, port authority, district, or any state agency other than the department shall, notwithstanding any other provision of law, pertain only to time-of-day restrictions, speed zones, special-use areas, and sanitation and pollution control, and the measure shall not conflict with this chapter or the regulations adopted by the department. Except as provided in subdivision (c), any measure relating to boats or vessels adopted by any governmental entity other than the department shall be submitted to the department prior to adoption and at least 30 days prior to the effective date thereof.

(b) The department may make special rules and regulations governing the use of boats or vessels on any body of water within the territorial limits of two or more counties, cities, or other political subdivisions if no special rules or regulations exist or if the department determines that the local laws regulating the use of boats or vessels on that body of water is not uniform and that uniformity is practicable and necessary.

(c) (1) Any entity, including but not limited to any county, city, port authority, district, or state agency, otherwise authorized by law to adopt measures governing the use and equipment, and matters relating thereto, of boats or vessels, may adopt emergency rules and regulations which are not in conflict with the general laws of the state relating to boats and vessels using any waters within the jurisdiction of the entity if those emergency rules and regulations are required to insure the safety of persons and property because of disaster or other public calamity.

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(2) The emergency rules and regulations adopted under paragraph (1) shall become effective immediately upon adoption and may remain in effect for not to exceed 60 days thereafter. The emergency rules and regulations shall be submitted to the department on or before their adoption.

(3) After submission of emergency rules and regulations adopted pursuant to paragraph (1) to the department, the department may authorize the adopting entity to make the emergency rules and regulations effective for the period of time greater than 60 days that is necessary in view of the disaster or circumstances.

661. Limitation of liability of owner of a numbered vessel. (a) Every owner of an undocumented vessel numbered under this code is liable and responsible for the death of or injury to person or property resulting from negligence in the operation of such vessel, in the business of the owner or otherwise, by any person using and operating the same with the permission, express or implied, of the owner, and the negligence of such person shall be imputed to the owner for all purposes of civil damage. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner if at the time of the injury, death or damage it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained in this chapter shall be construed to relieve any person from any liability which he would otherwise have, but nothing contained in this chapter shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

(b) The liability of an owner for imputed negligence imposed by this section and not arising through the relationship of principal and agent or master and servant is limited to the amount of ten thousand dollars (\$10,000) for the death of or injury to one person in any one accident and, subject to the limit as to one person, is limited to the amount of twenty thousand dollars (\$20,000) for the death of or injury to more than one person in any one accident and is limited to the amount of ten thousand dollars (\$10,000) for damage to property of others in any one accident.

(c) In any action against an owner on account of imputed negligence as imposed by this section the operator of the vessel whose negligence is imputed to the owner shall be made a party defendant if personal service of process can be had upon the operator within this State. Upon recovery of judgment, recourse shall first be had against the property of the operator so served.

(d) If there is recovery under this section against an owner based on imputed negligence, the owner is subrogated to all the rights of the person injured or whose property has been injured and may recover from the operator the total amount of any judgment and costs recovered against the owner.

(e) If the bailee of an owner with the permission, expressed or implied, of the owner permits another to operate the vessel of the owner, then the bailee and such operator shall both be deemed operators of the vessel of the owner within the meaning of subdivisions (c) and (d) of this section.

(f) Where two or more persons are injured or killed in one accident, the owner may settle and pay any bona fide claims for damages arising out of personal injuries or death, whether reduced to judgment or not, and the payments shall diminish to the extent thereof the owner's total liability on account of the accident. Payments aggregating the full sum of twenty thousand dollars (\$20,000) shall extinguish all liability of the owner for death or personal injury arising out of the accident which exists by reason of imputed negligence, pursuant to this section, and did not arise through the negligence of the owner nor through the relationship of principal and agent or master and servant.

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(g) If a vessel is sold under a contract of conditional sale whereby the title to such vessel remains in the vendor, such vendor or his assignee shall not be deemed an owner within the provisions of this section relating to imputed negligence, but the vendee or his assignee shall be deemed the owner notwithstanding the terms of such contract, until the vendor or his assignee retakes possession of the vessel. A chattel mortgagee of a vessel out of possession is not an owner within the provisions of this section relating to imputed negligence.

(h) No action based on imputed negligence under this section shall abate by reason of the death of any injured person or of any person liable or responsible under the provisions of this section. In any action for physical injury based on imputed negligence under this section by the executor, administrator, or personal representative of any deceased person, the damages recoverable shall be the same as those recoverable under Section 956 of the Civil Code.

662. Filing of local boating regulations. A copy of the ordinances or local laws adopted pursuant to this chapter, and of any amendments thereto, shall be filed in the office of the department.

663. Enforcement by peace officers; authority to stop and board vessels.

Every peace officer of this state or of any city, county, city and county, or other political subdivision of the state shall enforce this chapter and any regulations adopted by the department pursuant to this chapter and in the exercise of that duty shall have the authority to stop and board any vessel subject to this chapter, where the peace officer has probable cause to believe that a violation of state law or regulations or local ordinance exists.

663.1. Arrest without warrant. Notwithstanding any other provision of law, a peace officer may, without a warrant, arrest a person who is involved in an accident in the waters of this state involving a vessel when the officer has reasonable cause to believe that the person had been operating the vessel while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug.

663.5. Enforcement by harbor policemen; marking of police vessels. Within the territorial limits of a county, city, or district, a harbor policeman regularly employed and paid as such by the county, city, or district shall also enforce the provisions of this chapter and any rules or regulations adopted by the department pursuant to this chapter and the provisions of Chapter 2 (commencing with Section 9850) of Division 3.5 of the Vehicle Code.

In the exercise of his duties, a harbor policeman shall have the authority to stop any vessel subject to this chapter and to issue written notices to appear in court pursuant to Section 664. As used in Section 664, the term "officer" shall include a harbor policeman regularly employed and paid as such by a county, city, or district.

Every harbor policeman who is on duty for the purpose of enforcing the provisions of this chapter, and the rules and regulations adopted by the department pursuant to this chapter, shall wear a full distinctive uniform, and, if he uses a vessel, the vessel shall be painted a distinctive color and appropriately marked as specified by the department to identify it as a harbor police vessel.

663.6. Vessel shall stop on lawful order. Every vessel subject to this chapter, if under way and lawfully ordered to stop and lie to by a peace officer or harbor policeman authorized to enforce the provisions of this chapter who is either in a uniform of a law enforcement agency or the harbor police or in a vessel that is distinctly marked as belonging to a law enforcement agency or to the harbor police,

6698.2. Director's Authority for Restrictions or Closures.

(a) During emergency situations, such as actual or projected high water levels or flooding, and in the interest of preserving the safety of persons and property, the director, or his or her designee, may restrict or order the closure of all or any part of the waters in the Sacramento-San Joaquin Delta, its tributaries and distributaries, and Suisun Bay, Grizzly Bay, and Honker Bay and their tributaries and distributaries to recreational vessels.

(b) In accordance with Section 660 of the Harbors and Navigation Code, all emergency restrictions or closures issued by the Department shall be effective for no more than 60 days. However, the director, or his or her designee may issue new restrictions or closures when the emergency is expected to continue beyond the 60 day period, after a public hearing is held by the department to receive comments from the public.

(c) The director, or his or her designee, may rescind or modify the restrictions or closures based on the status of the emergency conditions and/or the information or testimony provided at the public hearing referenced in subsection (b) above.

(d) When the director, or his or her designee, determines that the emergency situation, such as high water levels or flooding, has diminished, a notice shall be issued to law enforcement agencies, marinas, and news organizations rescinding the restrictions or closure.

NOTE: Authority cited: Sections 63.9(e) and 660(b) and (c), Harbors and Navigation Code. Reference: Sections 33, 63.9(e), 650 and 660(b) and (c), Harbors and Navigation Code; Executive Order W-156-97; and Attorney General Opinion No. 97-307.

Article 6. Waterway Marking System

7000. Scope.

Pursuant to the authority vested in it by Section 659, Harbors and Navigation Code, the Department adopts rules and regulations for a uniform system for marking the State's waters; such rules and regulations to establish, (a) a system of regulatory markers for use on all waters of the State to meet needs not provided for by the U.S. Coast Guard system of navigational aids, and (b) a system of navigational aids for use on the waters of the State not marked by the U.S. Coast Guard and/or not determined to be United States navigable waters; provided that such rules and regulations shall not be in conflict with the markings prescribed by the U.S. Coast Guard.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7001. Definition (as used in this article).

(a) Waterway marker is any device designed to be placed in, on or near the water to convey an official message to a boat operator on matters which

may affect health, safety, or well being, except that such devices of the United States or an agency of the United States are excluded from the meaning of this definition.

(b) Regulatory Marker is a waterway marker which has no equivalent in the U.S. Coast Guard system of navigational aids.

(c) State Aid to Navigation is a waterway marker which is the equivalent of a U.S. Coast Guard aid to navigation.

(d) Buoy is any device designed to float which is anchored in the water and which is used to convey a message.

(e) Sign is any device for carrying a message which is attached to another object such as a piling, buoy, structure or the land itself.

(f) A Display Area is the area on a sign or buoy needed for display of a waterway marker symbol.

(g) Symbols are geometric figures such as a diamond, circle, rectangle, used to convey a basic message.

(h) "Department" means the Department of Boating and Waterways.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7002. Waterway Markers Used on the Waters of This State Shall Be As Follows.

(a) State Aids to Navigation.

(1) A red buoy or sign shall indicate that side of a channel to be kept to the right of a vessel when entering the channel from the main water body or when proceeding upstream; a green buoy or sign shall indicate that side of a channel to be kept to the left of a vessel when entering the channel from the main water body or when proceeding upstream.

These buoys or signs shall normally be used in pairs and only for the purpose of marking a clearly defined channel.

(2) A red and white vertically striped buoy or sign shall indicate the center of a navigable waterway.

(3) A red and green horizontally striped buoy or sign shall indicate a junction in the channel, or a wreck or obstruction which may be passed on either side. If the top band is red, the preferred channel is to the left when proceeding upstream or leaving the main water body. If the top band is green the preferred channel is to the right when proceeding upstream or leaving the main water body.

(4) White buoys shall indicate anchorage areas.

(5) The shapes of state aids to navigation shall be compatible with the shapes established by Coast Guard regulations for the equivalent Coast Guard aids to navigation.

(6) When lights are placed on buoys as an aid to navigation, their characteristics shall be compatible with those designated by Federal Regu-

tations for federal aids to navigation. Red lights for this purpose shall be used only on red buoys and green lights only on green buoys.

(b) **Regulatory Markers.**

(1) A diamond shape of international orange with white center shall indicate danger. The nature of the danger may be indicated by words or well-known abbreviations in black letters inside the diamond shape, or above and/or below it on white background.

(2) A diamond shape of international orange with a cross of the same color within it against a white center without qualifying explanation shall indicate a zone from which all vessels are excluded.

(3) A circle of international orange with white center will indicate a control or restriction. The nature of the control or restriction shall be indicated by words, numerals, and/or well-known abbreviations in black letters inside the circle. Additional explanation may be given above and/or below it in black letters on white background.

(4) A rectangular shape of international orange with white center will indicate information, other than a danger, control or restriction, which may contribute to health, safety or well-being. The message will be presented within the rectangle in black letters.

(c) **Letters or Numbers on Waterway Markers.**

(1) Numbers, letters or words on a state aid to navigation or regulatory marker shall be placed in a manner to enable them to be clearly visible to an approaching or passing vessel. They shall be block style, well proportioned and as large as the available space permits. Numbers and letters on red or black backgrounds shall be white; numbers and letters on white backgrounds shall be black.

(2) State aids to navigation shall be numbered or lettered for identification. Red buoys and signs marking channels shall be identified with even numbers, and green buoys and signs marking channels shall be identified with odd numbers, the numbers increasing from the main water body or proceeding upstream. Buoys and signs indicating the center of a waterway or a channel junction shall be identified by letters of the alphabet. All numbers and letters used to identify state aids to navigation shall be preceded by the letters "CF."

(d) **Reflectorized Material.** Where reflectorized materials are used, a red reflector will be used on a red buoy, a green reflector on a green buoy, and white reflectors only will be used on all other waterway markers, except that orange reflectors may be used on orange portions of regulatory markers, and yellow reflectors may be used on Special Markers, as defined in Section 7002.1.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7002.1. Special Markers.

Special markers are not primarily intended to assist navigation, but are used to indicate a special area or feature (i.e., traffic separation, anchorages, dredging, fish net areas, etc.) whose nature may be apparent from reference to a chart or other nautical document.

(a) Aids used to mark these areas or systems will be all yellow.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 655.3, and 659, Harbors and Navigation Code.

7003. Authority to Place Markers.

(a) No waterway marker shall be placed on, in, or near the waters of the State unless such placement is authorized by the agency or political subdivision of the State having power to give such authorization, except that the provisions of this section shall not apply to private aids to navigation under the jurisdiction of the U.S. Coast Guard.

(b) Such agency or political subdivision of the State will, prior to authorizing placement, obtain the necessary clearances of any federal and state agencies concerned. Nothing herein contained shall be construed to require such prior clearance with the Department.

(c) The agency or political subdivision of the State authorizing the placement of a waterway marker will inform the Department of the following:

(1) Exact location of the marker, expressed in latitude and longitude, or in distance and direction from one or more fixed objects whose precise location is known.

(2) The description and purpose of the marker, including its identifying number, if any, as required by Section 7002(a)(5), above.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7004. Maintenance of Waterway Markers.

Waterway markers shall be maintained in proper condition, or be replaced or removed.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7005. Display of Waterway Markers.

(a) A waterway marker may be displayed as a sign on a fixed support, as a buoy bearing a symbol on its surface, or as a sign mounted on a buoy.

(b) When a buoy is used to carry a symbol on its surface, it will be white, with a band of international orange at the top and a band of international orange above the water line at the bottom.

(c) A buoy whose sole purpose is to carry a sign above it will be marked with three bands of international orange alternating with two bands of white, each band occupying approximately one-fifth of the total area of the buoy.

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above the water line, except where the sign itself carries orange bands; however, nothing in these regulations will be construed to prohibit the mounting of a sign on a buoy which has been placed for a purpose other than that of carrying a sign.

(d) When symbols are placed on signs, a suitable white background may be used outside the symbol.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7006. Specifications for Waterway Markers.

(a) The size, shape, material, and construction of all markers, both fixed and floating, shall be such as to be observable under normal conditions of visibility at a distance such that the significance of the marker or aid will be recognizable in time to avoid danger.

(b) Waterway markers shall be made of materials which will retain, despite weather and other exposures, the characteristics essential to their basic significance, such as color, shape, legibility and position.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7007. Other Waterway Marking Devices.

(a) Mooring Buoys. In order that mooring buoys shall not be mistaken for aids to navigation or regulatory markers, they shall be white, with a blue band clearly visible above the waterline.

(b) Placement of markers such as mooring buoys and permanent race course markers will be processed in the same manner as waterway markers.

(c) Such markers shall not be of a color, shape, configuration or marking which could result in their confusion with any federal or state aid to navigation or any state regulatory marker, and shall not be placed where they will obstruct navigation, cause confusion, or constitute a hazard.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

7008. The Divers Flag.

(a) A red flag with a white diagonal running from the upper left hand corner to the lower right hand corner (from masthead to lower outside corner) and known as the "Divers Flag" shall when displayed on the water, indicate the presence of a person engaged in diving in the water in the immediate area.

(b) Recognition of this flag by regulation will not be construed as conferring any rights or privileges on its users, and its presence in a water area will not be construed in itself as restricting the use of the water area so marked.

(c) Operators of vessels will, however, exercise precaution commensurate with conditions indicated.